



POLICE DEPARTMENT

April 4, 2013

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Simon Laine
Tax Registry No. 936901
Narcotics Borough Bronx
Disciplinary Case No. 2012-6774

The above-named member of the Department appeared before me on February 5, 2013, charged with the following:

1. Said Police Officer Simon Laine, assigned to Narcotics Borough Bronx, while on-duty, on or about August 10, 2010, at a location known to this Department, in Bronx County, was discourteous to New York City Police Sergeant Timothy Jaycox, in that said Police Officer, while leaving the Conditions Team office, stated in sum and substance, "I should smash you in the fucking face with this door!"

P.G. 203-09, Page 1, Paragraph 2 PUBLIC CONTACT – GENERAL,
GENERAL REGULATIONS

The Department was represented by Mark Berger, Esq., Department Advocate's Office, and Respondent was represented by Craig Hayes, Esq.

Respondent, through his counsel, entered a plea of Not Guilty to the subject charge. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found Guilty in Part.

SUMMARY OF EVIDENCE PRESENTEDThe Department's Case

The Department called Sergeant Timothy Jaycox as its sole witness. The parties also stipulated to what Sergeant Jose Capella would testify to if he appeared at trial.

Sergeant Timothy Jaycox

Jaycox testified he has been a member of the Department for approximately 11 and a half years. He has worked in the Criminal Intelligence Section for one year. In CIS, he is the handler for confidential informants and keeps the Commanding Officer of Police Service Area (PSA) 7 up to date with crime trends and patterns.

On August 10, 2010, he was assigned as the anti-crime supervising sergeant for PSA 8 in the Bronx from 7:26 p.m. until 4:30 a.m. with a team of six plainclothes patrol officers in the housing developments in three precincts. That night Respondent was one of the officers who he was assigned to supervise. At around 12:00 p.m., Jaycox received a text message from Respondent saying, "I need an E day¹." Jaycox was unable to grant Respondent's request because they had only three police officers assigned to anti-crime for that day.

Instead, Jaycox sent Respondent a text message that Jaycox would give him three hours of lost time up front to find a babysitter. Respondent did not communicate whether or not he was going to take the three hours.

Jaycox arrived at 5:00 p.m. to start his tour. Jaycox believed that Respondent arrived on time for his scheduled tour at 7:30 p.m. Jaycox saw him in the lobby of the PSA and gave Respondent his assignment.

¹ Emergency day off

Respondent did not acknowledge the assignment, just walked straight past Jaycox into the special ops office², and slammed the door really hard. People in the lobby area looked to see what was going on, so Jaycox followed him. When Jaycox entered the office, there was no one else in there besides Respondent and him. Respondent was sitting in a chair at a desk on the far end facing the door. As Jaycox entered, Respondent turned his back to him.

Jaycox estimated that the office was approximately 15 feet by 30 feet, maybe smaller than 450 square feet.

Jaycox asked Respondent why he slammed the door. Respondent did not say anything. Jaycox asked, "What's going on?" Respondent did not say anything. Jaycox described his own tone as the same as the tone in which he was testifying.

Respondent had gone to a job earlier and Jaycox asked if the UF-250s (Stop Question and Frisk Reports) were complete. Respondent said they were not. Jaycox asked him why not. Respondent said, "I did not get to it yet." Jaycox said, "All right, complete them by the end of the tour." Respondent said in substance that was fine and he would get it done.

Then Jaycox told Respondent that the lieutenant had called to ask Jaycox if he was singling Respondent out for overtime. Respondent turned and said, "What was your answer to that, Sarge." Jaycox said, "Are you kidding me? . . . I don't assign the overtime. Overtime comes from the admin office." Jaycox was speaking in a normal tone of voice. Respondent's tone was raised, but he was not yelling.

Jaycox said that he thought that he also told Respondent, "I don't force the overtime on any of the guys" and that Respondent "was assigned overtime tour a few weeks before that with someone else and they did not want to do it and I called some people to take their overtime."

² Throughout this hearing, this room was referred to as the special ops office and as the crime office.

Then Jaycox told Respondent he was going to be assigned with Officer Ortiz in the van in Throgs Neck for the tour. Respondent stood up to leave. Jaycox said, "Your tour starts at 17:30. If you are going to be late or you need the day say call the desk. Don't call me personally for it." Respondent just continued walking.

Respondent opened the door to leave the office. As he got in range of the desk, he now had an elevated voice. He said, "I know what time my tour starts. I was here. I was in here. You can ask. I know what time my tour starts."

Jaycox said, "Wait a minute, Laine. Step back in the office." And Respondent continued walking. Jaycox said, "[Respondent], step back in the office." Respondent then came back inside, closed the door and sat down.

When asked why Jaycox told Respondent that if he needed an E-day in the future to go to the desk, Jaycox explained, "You are supposed to call the desk officer and request any lost time or E-day, day off and the desk officer is supposed to note it on the change sheet that the member of service called. Generally, if you have a team, the supervisor will get calls from . . . his personal phone and request time."

Respondent sat down in the first chair at the first desk, about a desk length from the door. Respondent turned the chair so that his back faced Jaycox. Jaycox said, "What's going on? . . . Is there something going on that I could help you with? I don't know what this is about. I don't know what's going on with you." Respondent "did not really acknowledge that I was standing there. He just turned around."

Jaycox said that he told Respondent, "Even now, I am standing here talking to you. Just you and I. We are just talking and you can't even look me in the face."

He had his hands on his face and he turned. He swiveled the chair around with his hands on his face and stared at Jaycox with his eyes wide open.

Jaycox said, "What is that? What are you looking at me like that for? I don't get it. His eyes were "like bugged out" looking at Jaycox. Jaycox said, "Right now, I am asking you a question. You are looking at me like the perps look at me when they want to pretend they don't know what I am talking."

He said, "This is a perp look?"

Jaycox said, "Yeah, yeah, it is."

Respondent stood up quickly. Jaycox did not know if that by standing up quickly Respondent was trying to intimidate him, but Jaycox was not intimidated. Then Respondent turned to walk out the door.

Jaycox was not going to talk to Respondent anymore in the office. He intended to allow Respondent to go out on patrol, but would let the lieutenant know what was going on.

As Respondent stepped through the door, Jaycox reached for the door handle. Respondent grabbed the door back and said, "I would smash you in the fucking face." Jaycox described Respondent making this statement "like he had momentum." Jaycox stepped back.

As Respondent walked away, Jaycox told him that he needed to remove his gun and give it to the desk officer. Jaycox told Respondent this because he had "never seen this guy act in a manner like that, not even in the street." Jaycox thought Respondent was unstable.

Jaycox described that at the moment that Respondent grabbed the door and pulled it back, Jaycox was walking behind him: "He had just stepped through it. When I reached for doorknob, he pulled it back in. And he pulled it like this, but he was facing that way. He pulled it in and goes, 'I will smash you in the face with this.'"

Jaycox stated that, on the day of August 10, he never yelled or cursed at Respondent. As of that day, Jaycox believed that he had been Respondent's supervisor for a few months. But the two of them had crossed paths before when Jaycox was a midnight supervisor and Respondent was on the midnight platoon under another sergeant.

Before August 10, the two of them never had any personal problems or similar incidents. He still does not have a personal problem with Respondent.

On cross-examination, Jaycox agreed that he testified that when Respondent first walked in, Respondent walked by Jaycox, went into the crime office and slammed the door. Jaycox explained that the door is behind the desk, "not directly behind it but to the left and behind." When Respondent slammed the door, Jaycox was standing maybe 10 or 15 feet away. Jaycox was standing beside the desk. Jaycox did not know how many police officers and supervisors were in this immediate area. Jaycox did know there was a desk officer and somebody working the telephone switchboard (TS) that night. Jaycox said that the person working the TS "could not have been in the same proximity to me and the door."

Jaycox agreed that Respondent was seated in the trial room in the position the TS operator would have been seated that day. Jaycox also agreed that the distance between Respondent and him was maybe another four feet longer than the distance between where Jaycox was seated in the trial room and Respondent's attorney was standing. Jaycox agreed this was about 10 or 12 feet. Jaycox agreed that the TS operator was close enough to the door, so the operator could hear if that door was slammed.

Jaycox did not remember exactly where the desk officer was sitting, but assumed he was right behind the desk, to the left of the TS operator. Jaycox agreed that the desk officer would have been a sergeant.

Jaycox acknowledged that the desk area at that precinct is generally a very active area that time of day. The time of the incident was after the tour change. Jaycox conceded that he was not the only person in the area when Respondent slammed the door.

Jaycox agreed that in his direct testimony he referred to the door three times. The first time Jaycox claimed Respondent slammed the door. The second time Respondent walked through the door and yelled from the desk, "I know when my tour starts." Jaycox was walking out of the room when Respondent yelled.

Jaycox agreed that when Respondent yelled the desk officer and the TS operator would have been right near Respondent. Jaycox also agreed that an officer yelling "I know when my tour starts" at a supervisor in the desk area would be a strange occurrence. Jaycox "absolutely" agreed that any witness to this type of yelling would tend to remember it.

When asked whether after Respondent yelled did the desk officer do anything, Jaycox answered, "No, I did." Jaycox explained that he asked Respondent to come back into the office.

Jaycox agreed that he claimed Respondent opened the door and with a raised voice threatened to smash his fucking face with the door. Jaycox explained that when Respondent made this threat, the door was partially open and Respondent had it in his hand. This was the same door which was directly behind the desk area. Jaycox agreed that there is supposed to be a desk officer and TS operator in that desk area. He agreed that a lot of forms are kept behind the desk, that when you arrest someone you have to bring them before the desk, and that there are batteries there. Jaycox did not remember a lot of people being around or how many people were there. He did remember the desk officer was there. Jaycox said there may have been a TS operator there. He conceded that generally there are a lot of people there.

Jaycox agreed that before he spoke with Respondent, the lieutenant called him. He explained that the lieutenant called him on his cell phone while he was on the way to work to talk about the UF-250s that were not prepared. The lieutenant was expecting them to be prepared but did not seem upset that Jaycox or his men had not handed them in yet.

The lieutenant told Jaycox that Respondent felt Jaycox was singling him out and the lieutenant "wanted to know what was going on with that." Jaycox conceded that the lieutenant basically told him about an accusation that Respondent was making about Jaycox. This conversation took place before Jaycox met with Respondent inside the office.

Jaycox acknowledged that preparing UF-250s and turning them in quickly is part of his job and that bosses are not happy when paperwork is not ready.

Jaycox confirmed that in his direct testimony that he said the only reason he wanted to talk with Respondent was because Respondent slammed the door. Jaycox denied that at that moment he wanted to talk to Respondent about his accusation against him to the lieutenant. Jaycox explained that while having that discussion was important, it was more important to get personnel out to their assignments.

Jaycox said that before going out on patrol, his team meets with their partners in the crime office. Jaycox acknowledged that after he gave Respondent his assignment and told him who he was working with, Respondent generally went to the place where officers meet with their partners.

When the Court asked did Jaycox mean by "generally" that Respondent went in the general direction of the crime office, Jaycox replied, "I may have misunderstood. Generally the officers meet in that office." Jaycox conceded that Respondent just walked to the place where

officers typically meet their partners to go out on patrol and this was the right place to meet his partner.

Jaycox confirmed that he had never seen Respondent act inappropriately with him or with anyone on the street. He reiterated that Respondent's behavior was completely out of character for him. Jaycox agreed that up to the time when he used the word "perp," Respondent never cursed at him.

Jaycox explained that Respondent raised his tone at him twice, but never yelled at him. The second time Respondent raised his tone was when he was near the desk and said that he knew when his tour starts. The first time was while Respondent was sitting inside the office and Jaycox asked him about the overtime issue with the lieutenant.

Jaycox started talking with Respondent about the conversation Jaycox had with the lieutenant about Respondent's claim of being singled out for overtime. Because he had not singled Respondent out for overtime, Jaycox agreed that Respondent was accusing Jaycox of something that Jaycox did not do to a lieutenant.

When asked whether Respondent was making a false allegation against him to his superior officer, Jaycox replied: "I don't know what the conversation was other than that he felt that he was being singled out. I don't know if he accused me of singling him out so I don't know if it was an accusation. But the lieutenant said he feels like I am singling him out, so I don't know what their conversation was."

Jaycox further explained, "I don't know that it bothered me. I wanted to know what was said and that's why I brought it to Respondent's attention." When asked if it did not upset him that Respondent went over his head about something that he claimed that Jaycox was doing to him that was inappropriate, Jaycox replied, "No."

When asked if officers under his command go to lieutenants and make claims about him that are untrue does that not bother him, Jaycox replied, "If they do in fact do that, that would bother me."

Jaycox thought that before discussing what Respondent said to the lieutenant, Jaycox asked Respondent about the UF-250s. Jaycox agreed that the lieutenant talked to Jaycox about the UF-250s not being prepared when they should have been prepared; then Jaycox spoke to Respondent about the UF-250s, in accordance with the chain of command.

Jaycox explained, "It wasn't like we were in an argument about it. He said he hadn't had an opportunity to prepare them yet. I asked him to do it by the end of the tour and he said okay."

Jaycox agreed that after Respondent left the office, Respondent yelled, "I know when my tour starts." Then Respondent came back in, sat down and had his head in his hands. Jaycox confirmed that at some point Respondent was looking at him but not saying anything. Jaycox agreed that Respondent was not arguing with him, not raising his voice, not using any profanity, not standing up or moving into Jaycox's personal space.

When Respondent was just looking at him, Jaycox denied that he said to Respondent, "Why are you looking at me like a perp?" Jaycox explained that he said to Respondent, "What is that look you're giving me like that? With your eyes like that?" And Respondent did not say anything. Jaycox said, "Right now you are looking at me like the perps look at me when they want to pretend they don't know what I am talking about." Then Respondent said, "Oh, this is a perp look?" Jaycox said, "Yeah."

Jaycox agreed that during his 11 ½ years with the Department he has heard the term "perp" many times. Jaycox also agreed to the following: The term "perp" can be used in a clinical fashion; for instance, when responding to a burglary in progress, someone may say, "The

'perp' is leaving the building running down 161st Street." Officers in the Department could use the term "perp" as slang.

Jaycox clarified, "I did not say he looked like a perp. I said he was looking at me like a perp looks at you when they want to pretend they don't know what you are asking." Jaycox agreed that Respondent was giving him the look of a perp, but denied that he was calling Respondent a perp. Jaycox agreed that referring to someone as a perp, is using a slang term and is an insult in this job. He agreed that the word could be considered an offensive comment.

Respondent's counsel then gave Jaycox a hypothetical: If you had an 18 year old son and one of the officers pulled him over and came to the command and said, "Hey Sarge, I pulled your son over. You know what? As I was talking to him and the way he was acting and the way he was looking at me, he was acting like a perp," how would that make you feel? Jaycox responded, "Being a realist I would ask him why he felt that way. I would want to know what made the cop feel that my son was acting like a perp." When asked if he would appreciate the comment that his son was acting like a perp, Jaycox replied, "If it wasn't accurate I wouldn't appreciate it."

Jaycox said he has made a couple hundred arrests in his career. When asked by Respondent's attorney how does a perp look at you as opposed to the way Respondent's attorney is looking at you, Jaycox gave the following response: "Well, being on this job generally you deal with hundreds of different people who are trying to lie to you. I mean, if you're in a unit where there is like a high amount of arrests, you deal with a lot of people that are not good people. They lie to you. They don't want to answer a question when they think it's going to incriminate them. And when you ask someone the right question and they look at you like you

did not say a word, like you have no idea what's going on, that is the way a perp looks at you when they want to act like they don't know what you are talking about."

Jaycox confirmed that he did not like the way Respondent was looking at him. Jaycox agreed that Respondent did not physically do anything to Jaycox after that.

Respondent's attorney asked if people do not respond to his questions and look at him in a certain way so that he thinks that they do not know what he is are talking about, does he call that a "perp look"? Jaycox replied, "Depends on the situation. I am not calling everybody that I don't like the way they look like a perp."

Jaycox confirmed that as a supervisor he is required sometimes to instruct, train and discipline his officers. When asked if he was ever taught that it was proper to insult his subordinates, Jaycox replied, "I don't insult my subordinates." In response to further questioning, Jaycox did not feel that he was insulting Respondent by saying that Respondent was looking at him the way a perp looks at him. Jaycox did not feel that he was putting Respondent in the class of perps.

Jaycox agreed that after Respondent stood up quickly, turned and walked out of the room, he decided at that moment that Respondent was off his team.

Jaycox disagreed with Respondent's attorney's assertion that if Jaycox makes a comment to an officer such as "you're looking at me the way a perp looks at me" and that officer responds by leaving the area, Jaycox considers that officer off his team. Jaycox disagreed that he made the decision immediately after Respondent stood up and walked out the door. Jaycox explained, "Everything coupled together is why I made that decision, not because he stood up and walked out of the room." He agreed that this last behavior was the last straw that led him to make his decision.

Jaycox reiterated that Respondent walked to the door, opened it and said in a raised voice, "I should smash this fucking door in your face." Jaycox confirmed that he decided to ask for Respondent's gun and shield because he believed that Respondent was unstable.

Jaycox did not expect that Respondent would be suspended for this conduct. When asked if he expected Respondent would be modified for this conduct, Jaycox said that he thought, "Possibly. Not modified, restricted."

Jaycox agreed that once he gave this order, Respondent turned over his gun and shield without any argument or further conversation.

That same night both Jaycox and Respondent were questioned about what happened in an official Department interview. Jaycox agreed that in his interview he basically explained what he testified to in this Court and that afterwards the Department gave Respondent's gun and shield right back to him. Jaycox agreed that supervisors who have the authority to take away someone's gun and shield either by modification or suspension decided that Respondent should get his gun and shield back that very night. Jaycox agreed that nobody of authority agreed with his determination that Respondent was unstable and that Respondent was not suspended or modified that day. Respondent remained on full duty status and the only change in Respondent's status was that he was moved out of Jaycox's tour.

Jaycox did not hear Respondent say, "If I was a perp I would slam this door in your face like a perp." Jaycox admitted that it was possible that Respondent could have said "If I was a perp," but Jaycox heard the word "smash," not "slam."

Jaycox testified that when he reached for the doorknob, Respondent pulled the door from his hand. At that point, Respondent was already through the door, not already outside the office; Jaycox explained, "Probably on the threshold." Jaycox did not know when he saw both of

Respondent's hands. However, Jaycox said, "both hands were on the doorknob, but from the outside." Jaycox explained that it appeared Respondent was trying to get momentum to swing the door towards Jaycox by "pulling it back, pushing it forward."

Jaycox agreed that he was behind the door and that Respondent was outside pulling the door towards Respondent. Jaycox believed that he wanted to pull it back and then push it into Jaycox. When asked if Respondent could have just been trying to close the door, Jaycox replied, "Not with his hands on the outside of the door. He would have closed his fingers in it."

When Jaycox went to reach for the doorknob, Respondent pulled the door away from Jaycox. Jaycox thought that Respondent was going to hit Jaycox with the door.

When asked if anybody in the desk area looking in their direction would have seen the incident he described, Jaycox explained that the desk officer sitting at the desk is not able to see the door to the special ops office. But Jaycox agreed that there are areas in the precinct around the desk where you can see that door.

On re-direct examination, Jaycox said that it was not common for officers to not acknowledge their assignments after he gives them. Jaycox agreed that if an officer does not acknowledge an assignment, he takes action to make sure that officer is going to that assignment. Jaycox confirmed that he had no doubt about seeing the winding up motion that Respondent made. When asked about Respondent's tone of voice, Jaycox described it as an aggressive tone that conveyed he definitely was not joking. Jaycox reconfirmed that he immediately thought that Respondent was actually going to slam the door in his face.

Jaycox agreed that lieutenants routinely want to institute different procedures or require numbers that need to be met in filling out paperwork. Because he spoke to the lieutenant everyday, Jaycox was not surprised that the lieutenant was calling about these issues

In response to the Court's question, Jaycox explained that he did not like the way that Respondent was looking at him because Jaycox believed that Respondent was acting as though he did not understand what Jaycox was asking him. And Jaycox had made "a clearly stated comment." Jaycox asked Respondent what was going on, what was wrong, was there something that they could do. He did not know if Respondent had some non-work related problem. Instead of answering him, Jaycox said Respondent was "blowing me off."

Jaycox agreed that he thought that Respondent was pretending not to understand him. Jaycox explained that as a police officer, you interact with people who commit crimes but do not want to tell you the truth. When you question them about what they might have done and they do not know what to say to you, they will give you a blank stare as if they did not even hear what you said. When asked about his response to the Respondent counsel's hypothetical, Jaycox explained that if he learned that his son was acting the way the people that they arrest act, he would not have much of an issue with being told that his son was acting like a perp. Jaycox reiterated that he did not mean to indicate that if Respondent is looking him like a perp then Respondent is a perp.

Jaycox knew that the desk officer was present that night. He knew that there was somebody on the TS, but did not know if the TS operator was there for the entire incident. He remembered a TS operator there when he was working on the computer behind the desk.

On re-cross examination, Jaycox thought that he did tell the Department investigators that when this incident ended, the entire group around the desk turned around to see what was going on. Jaycox remembered that when Respondent said he knew what time his tour starts, Jaycox saw people looking. That was when Jaycox asked Respondent to come back inside.

After being read his statements from his official Department interview, Jaycox agreed that he told his interviewers that “the whole group turned around and looked. I assumed they heard what he said. Everybody at the front desk turned around and looked. I said, ‘Put your gun and shield on the desk’ and the sergeant looked up.”

Summary of Sergeant Jose Cappella’s Official Department Interview

Both the Department Advocate and Respondent’s counsel stipulated to what Capella would testify if he appeared. Then the Advocate read the summary from the investigator’s worksheet into the record:

Sergeant Jose Cappella tax number 915058 appointed June 30, 1995 was formally interviewed under Patrol Guide procedure 206-13 and 208-03. Cappella stated he was positioned as the PSA 8 desk officer and he observed Sergeant Jaycox and [Respondent] in verbal exchange and heard Sergeant Jaycox suggest they both go into the anti-crime office located to the rear of the command front desk so they could continue the conversation in private.

Sergeant Cappella stated after approximately five minutes [Respondent] emerged from the anti-crime conditions office. Sergeant Cappella stated he heard [Respondent] say “with this door.”

Respondent’s Case

Respondent testified in his own behalf.

Respondent

Respondent has been a member of the Department since January 10, 2005. When he graduated from the Police Academy he was assigned to PSA 8 and now works in the Narcotics

Division as an investigator. In his commands he has done patrol, anti-crime, and conditions. He has made 400 arrests in his career.

On August 10, 2010, he had to contact his immediate supervisor, Sergeant Jaycox, because he needed an emergency day off to watch his son. His son's mother was not able to watch him during Respondent's scheduled tour. He texted the sergeant a few hours before his tour to make his request. Jaycox did not grant that request, but gave him an option of coming in three hours late.

Respondent eventually found child care for his son that day and reported on time for work. When he reported for work, Jaycox told him his assignment and who his partner was. Respondent said okay and went to the crime office to look for his partner. The crime office is where officers congregate and have muster, where normally their assignments are given and where Respondent thought his partner would be.

Respondent agreed that they turn out the tour from the crime office. Respondent said that when he went into the crime office, he did not slam the door, but closed it behind him. Respondent explained you are supposed to keep the door closed at all times because it is the special ops office. If you are in special ops you are allowed to be in there. Anyone else has to knock or not go inside.

When he was inside the crime office, he sat down to wait for his partner and other team members to enter. Soon after, Jaycox entered the office and approached Respondent. Jaycox asked Respondent about a UF-250 that he had failed to prepare. Jaycox also began to tell him about a conversation Jaycox had with their lieutenant and how frustrated and upset Jaycox was about this conversation. Jaycox asked Respondent why did he have the lieutenant breathing down his neck about overtime when Jaycox and the lieutenant did not get along. Respondent

could have come to Jaycox, Jaycox said, if Respondent had an issue with the overtime. He seemed upset and frustrated that Respondent went above him.

Respondent answered with questions. He tried not to argue because Jaycox was angry and his tone was elevated. Respondent also told Jaycox that he would complete the UF-250 that day.

Jaycox gave Respondent his assignment again. Respondent believed the conversation was over, so he stood up to leave the office. Then the sergeant said that he wanted to reiterate for Respondent to be on time. Respondent told the sergeant that he was on time and that he was the first one in the office. Respondent explained that when he made this statement, he did not yell at Jaycox, but just said it as he was leaving. Then Jaycox said, "Officer [Respondent], get back in the office" and Respondent did. Jaycox seemed more upset than he was the first time. Respondent sat down at the nearest chair to the door to hear what Jaycox had to say.

Jaycox said, "What's wrong? What's wrong with you? What's your problem? You don't have to go through a lieutenant if you have a problem on this team. You can come to me. Why are you looking at me like that? Don't give me that perp look."

Respondent said, "What look?"

Jaycox said, "That look right there. That's a perp look. Don't look at me like that."

Jaycox was very upset at that point with Respondent. Respondent explained that he tried his best to avoid an argument, although he felt that Jaycox wanted to engage him in one. Respondent felt it best to remain calm and quiet and did so. He felt that if he matched Jaycox's tone the interaction could escalate to a point beyond repair. Respondent remained silent and was just looking at him.

Respondent explained that Jaycox was Respondent's superior. The way Jaycox was talking to him, "he had to get some things off his chest," so Respondent let him do that. Respondent said that generally when bosses want to tell him about his performance, good or bad, his approach is to sit there and listen to the instructions. This is "because their job is to instruct you on to do something that you have to do, they are your superior."

But when Jaycox said, "Don't look at me like a perp," Respondent felt hurt. He felt hurt because, he explained, "I honestly like the sergeant. We work well together. He is very knowledgeable and smart. I felt like he let me down . . . I felt like dirt, like low like scum."

Respondent said that he and other police officers use the word "perps" to refer to criminals that they arrest and use the term disparagingly and as an insult.

After Jaycox said that Respondent was looking at him like a perp, Respondent said, "I honestly felt that he was no longer instructing me as a sergeant, as my supervisor. I felt that it was a personal attack against me and my character as a person, as a human. So therefore, I felt like it wasn't necessary to engage in a conversation or come at him in a loud manner or be belligerent like he was. So I felt the best the thing to do at that time was to remove myself from the office from his presence."

Respondent said that the sergeant had never before insulted him like that.

Respondent stood up and went to the door. Because he had sat on the first chair near the door, he reached the door first. As he opened the door, he said to the sergeant, "If I'm such a perp I should slam this door in your face like a perp." When he said this, he did not yell, he explained, "because he was so close to me, it did not make sense to yell. I said it to him." Respondent testified that he never said, "I should smash you in the fucking face with this door."

When asked why he said what he said to the sergeant, Respondent explained, "Well, it was kind of like a metaphor to let him know that, listen, I am not a perp. A perp would do something like this. So to show you that I am not a perp, that is something I should do to you in response to you calling me that."

Respondent stated that he never slammed the door in the sergeant's face, that he never intended to do that, and never tried to do that.

Then he left the crime office. The sergeant was right behind Respondent, who "could feel him behind me." Jaycox said, "Turn your gun and shield to the desk sergeant." Respondent complied, had a seat and waited until the PBA (Patrolmen's Benevolent Association delegate) responded to the official Department interview.

That night Respondent was interviewed and explained to his interviewers what he had just testified to in this Court. After this official Department interview, his duty status was not changed and he was kept on full duty. Respondent said that the duty captain did not think that he had done anything wrong and returned his gun and shield to him. Respondent was never referred to psychiatric services.

When Respondent came in the next day to start his regular tour, he learned that his tour had been changed to midnights. He remained on regular patrol. About three months later and about three years ago, Respondent was transferred to Narcotics. Respondent considered this transfer a promotion. Respondent also expected to be promoted to detective in May 2012, but could not be promoted with this open case.

When asked whether by the words "slam the door in your face" Respondent meant actually slam the door physically in Jaycox's face, Respondent explained, "I meant slam the door behind me so he could see me walkout so the only thing he could see is the door." Respondent

further explained that he said what he said, "To express my frustrations and explain to him that is not the type of person that I am. The way -- the name you used for me is totally incorrect. To describe my type of character, that action that I just described, is the type of character that would do something to you."

In response to the Court's question, Respondent said, "My point was to let the sergeant know that I wasn't a perp. That if I was a perpetrator that I would exit the office and slam the door in your face." Respondent reiterated that by saying "slam the door in your face" he meant, "Close the door behind me as I exited the office."

On cross-examination, Respondent explained that the door would not actually be going away from the sergeant's face if Respondent were to slam it, because the door opens to the exit. Respondent "would have to open the door towards me and then close it behind me."

Respondent agreed that the door opens into the office and that if Respondent were outside the office slamming the door shut, Jaycox is on the opposite side and the door is being slammed away from the sergeant's face.

Respondent confirmed that he was trying to convey to the sergeant that using the word "perp" to describe Respondent is not the type of character he is. Respondent conceded that a more effective way to communicate instead would have been to have just said, "Sarge, that is not the type of character I am."

Respondent confirmed that on August 10, 2010 he needed an E-day because he could not find a babysitter. He could not recall the efforts he made to find a babysitter because that day was about three years ago. He just remembered that he found someone to watch his son and came to work on time. Respondent denied that he did not make any efforts because he just assumed that the sergeant would give him the E-day. Respondent explained, "No, I did make a

lot of effort. I had a busy day that day. I am sure I made a lot of effort, because at that point when I did text the sergeant, I was in a bind. And I thought by letting him know hours prior to tour, I would have an opportunity. It will give me the opportunity to take the E day.”

Respondent agreed that he contacted the sergeant about seven hours before his tour. He also agreed that communicating by text message is not the standard departmental procedure for requesting an E-day, but that he felt comfortable enough to ask that way. Respondent believed that in the past Jaycox had accommodated Respondent. Respondent disagreed that he was surprised or disappointed when Jaycox denied his request, because Jaycox gave him an option.

Respondent agreed that he made a number of unsuccessful efforts to find babysitting coverage. He conceded that when denied the E-Day he was disappointed, but acknowledged that he was given the option of coming in three hours later.

Respondent also conceded that, rather than send a text message, if he thought that “there was a possibility that he would say no, I would have done it in a formal way.” Respondent denied that he just assumed that Jaycox would say yes, adding, “or else I wouldn’t have asked.”

When Respondent asked for an E-Day, he was not at home. He did not know from where he left that day when he came into work. He did not recall approximately how long it took him to get to work. He agreed that between the time he received Jaycox’s denial of his E-Day request and the time that he had to leave he found a babysitter. He conceded that it could have taken hours for him to find a babysitter, but he did not recall.

He agreed that at the last minute trying to find a babysitter can be difficult. He believed that his son’s grandmother was the babysitter. He explained that he did not call the grandmother

when he first needed a babysitter, because she was at work and he could not get in touch with her.

Respondent denied that he slammed the door behind himself after Jaycox gave him his assignment and he walked into the office. When asked whether he denied slamming the door behind himself in his official Department interview, Respondent did not remember. When asked whether looking at his statement from that day would help refresh his recollection, Respondent said, "No, I don't need to look at it. I just know I did not slam the door behind me." When asked again whether in his interview he did not deny slamming the door behind him, Respondent said he would need to look at the transcript to remember. After reading an excerpt from the transcript, Respondent recalled saying in substance, "I don't recall slamming it. I closed it behind me."

Respondent agreed that after he was in the office, Jaycox came in soon after and spoke to him about the UF-250s and Respondent's conversation with the lieutenant. Respondent explained that Jaycox spoke about Respondent's arriving on time after Jaycox gave Respondent his assignment the second time. Respondent confirmed that there were two instances when the two interacted in the office.

Respondent explained that the first time he was in the office with Jaycox, Jaycox told Respondent about the UF 250s and about his confrontation with the lieutenant. After those conversations, Jaycox gave Respondent his assignment for the second time. When Respondent was leaving, Jaycox "made the statement about punctuality." Respondent replied that he was on time and Jaycox called him back into the office.

Respondent confirmed that it was during the period after Jaycox called him back into the office that Jaycox made the "perp" statement.

Respondent denied that when he came back in the office that second time that Jaycox's tone was apologetic. Respondent said, "His tone was still about the same. He was frustrated and angry. I did not see a difference in tone."

When asked if during his official interview Respondent said that during that particular interaction Jaycox seemed to want to apologize, Respondent replied, "He was telling me when he was trying to come at me: What's wrong with you? If there is something that you need to tell me, you don't have to go to a lieutenant. I guess you could say he was apologetic. But he was still frustrated because I wasn't replying or giving him answers regarding it." Respondent could not say that Jaycox was yelling and did not recall Jaycox yelling during the second time.

In response to the Court's questions, Respondent perceived that Jaycox was frustrated and angry because Respondent was not giving Jaycox answers and because Jaycox had had an altercation over the phone with the lieutenant.

When asked whether, although Jaycox was apologetic but also frustrated and angry, Respondent was just choosing not to answer Jaycox's questions, Respondent replied, "I answered his questions regarding the 250 and the overtime." Respondent explained that was during the first conversation. The second time Jaycox called him into the office and was asking him questions, Respondent said, "I did sit there and I did have my head down in my hands."

Respondent denied that he decided to get up and leave when Jaycox first asked him why he was looking at him the same way a perp would. Respondent explained, "Not at this moment. From what I remember, when I looked at him he said, 'Why are you giving me that perp look?' And then I looked at him. Then I looked at him again. And I said, 'What perp look? What's a perp look?' He said, 'That look. That look right there is a perp look.' So then I was shocked and I was dumbfounded and I proceeded to end the conversation and whatever he felt was

necessary to get off his chest. I honestly felt like it wasn't worth it to listen to so I got up and proceeded to exit the office."

When asked if part of the reason that he left was frustration, Respondent replied that he was insulted by Jaycox's comment. Respondent denied that it was frustration that lead to him saying what he said to Jaycox: "No, what I said was out of hurt. I was hurt and that's why I said what I said. And I was disappointed by his choice of words."

When asked if he remembered that at his interview he said he made his statement to Jaycox out of frustration, Respondent did not deny that and explained, "I am also adding to the fact that I was hurt and I was disappointed." Respondent reconfirmed that he was frustrated, hurt and disappointed by Jaycox's comments.

When Respondent made his comment to Jaycox, he explained, "I had my hand on the door and I was trying to leave the office and I said what I said. At that time the door was slightly ajar before I exited. And once I said what I said, when I had my hand on the door and the door was slightly ajar, I proceeded to exit. At that point he heard what I said and he asked me to hand in my gun and shield. He was right behind me."

Respondent explained that the door "was open to the point where I was almost -- it was ajar, I was trying to walk out the door. I don't know how far it was open. I know I had the door open in my hand."

When asked if other people might be able to hear what he was saying, Respondent replied, "To the proximity of the desk if the door was open, I'm sure someone would be able to hear something, I can't describe."

When asked did not Respondent just say that the door was open, Respondent replied, "I did not say how far it was open" and that he could just not say "how far open."

When asked whether when Respondent left, Jaycox was finished with his conversation, Respondent replied, "I don't know he was still getting things off his chest," but felt that the conversation had gone beyond Jaycox instructing him as a supervisor. He felt that by using the word "perp," Jaycox had personally attacked him, so he chose to end the interaction by getting up and walking away.

When asked whether he wanted to get the last word before walking away, Respondent replied, "Not that I wanted to, but I did. I did get the last word and I said what I said to the sergeant."

Respondent agreed that when he opened the door he had already made a decision to leave and that he had had enough. He agreed that with the door open nothing was obstructing or blocking him, Jaycox was not physically restraining him, and Jaycox was not screaming, "Don't you dare get up, don't you dare walk out on me."

Respondent admitted that he did not have to say what he did and that it was an emotional response to what Jaycox had said to him.

Respondent agreed that he got up out of the chair, put his hand on the doorknob, opened the door and still had not said anything. When asked whether Respondent committed three acts before he decided to say something, Respondent replied, "If you consider three a lot, then three's a lot. To me it's not much. But I did say it in three acts, if you want to put it that way."

When questioned by the Court, Respondent admitted that he was angry because of Jaycox's choice of words.

On re direct examination, Respondent agreed that, during the course of his career, he has been instructed, disciplined verbally or told what to do by a supervisor hundreds of times. Respondent said that he could not ever recall in his career any other supervisor ever resorting to

such name calling. When asked if it was fair to say that this was the only time that someone used such a derogatory term as a supervisor in a police officer relationship, Respondent replied yes.

FINDINGS AND ANALYSIS

Respondent is charged with discourtesy to New York City Police Sergeant Timothy Jaycox for saying in substance while leaving the Conditions Team office, "I should smash you in the fucking face with this door!"

Jaycox and Respondent were the only witnesses. They have two very different interpretations of what was said and their behavior toward each other on August 10, 2010.

In Jaycox's version, Respondent had requested an emergency day off by text message and Jaycox had denied that request. Before he made this request, Respondent had complained to the lieutenant about feeling singled out by Jaycox for overtime. After reporting for duty and receiving his assignment from Jaycox, Respondent ignored Jaycox, walked into the special ops room and slammed the door behind him. Jaycox followed Respondent into the room to make sure that Respondent was going to his assignment.

Jaycox explained to Respondent that Jaycox was not in charge of assigning overtime. He gave Respondent his assignment and told Respondent that in the future if he is going to be late or he needs a day off that Respondent should call the desk instead of Jaycox. Respondent then opened the door of the office and said in an elevated voice, "I know what time my tour starts. I was here. I was in here. You can ask. I know what time my tour starts."

Jaycox called Respondent back into his office. He asked questions to try to understand whether Respondent was having a problem and whether Jaycox could help. Respondent would not answer him, was seated with his back toward Jaycox and his hands were covering his face.

Jaycox said to Respondent, "Even now, I am standing here talking to you. Just you and I. We are just talking and you can't even look me in the face."

Respondent swiveled the chair around and stared at Jaycox with his eyes wide open. Jaycox said, "What is that? What are you looking at me like that for? I don't get it." Jaycox described Respondent's eyes as "bugged out." Jaycox said, "Right now, I am asking you a question. You are looking at me like the perps look at me when they want to pretend they don't know what I am talking."

Respondent said, "This is a perp look?"

Jaycox said, "Yeah, yeah, it is."

Respondent stood up quickly and turned to walk out the door, while Jaycox followed behind him. As Respondent stepped through the door, Jaycox reached for the door handle. Respondent grabbed the door, pulled it back and said, "I would smash you in the fucking face." Jaycox stepped back, thinking that Respondent was going to slam the door in his face.

Because he had never seen Respondent behave like this before, "not even in the street," Jaycox thought Respondent was unstable. He told Respondent to remove his gun and give it to the desk officer.

Respondent's version of the conversation was different. Although he had been denied an E-Day, Respondent did find child care and reported on time for his tour. After getting his assignment and the name of his partner from Jaycox, Respondent went to the crime office where

he expected to find his partner. Respondent testified that he did not slam the door and explained that the door to the special ops office is supposed to be kept closed at all times

Jaycox came into the office and told Respondent about his conversation with their lieutenant. Jaycox wanted to know why, if Respondent had a problem with overtime, that Respondent did not come to Jaycox instead. Jaycox said that he was frustrated and upset about what Respondent did, because he did not get along with the lieutenant. Jaycox was angry and his tone was elevated, so Respondent tried not to argue.

When Respondent believed that the conversation was over, Respondent stood up to leave the office. Then the sergeant said that he wanted to reiterate for Respondent to be on time. Respondent told the sergeant that he was on time and that he was the first one in the office. Respondent explained that when he made this statement, he did not yell at Jaycox, but just said it as he was leaving.

Then Jaycox said, "Officer [Respondent], get back in the office" and Respondent complied. Respondent sat down at the nearest chair to the door to hear what the sergeant had to say.

Jaycox said, "What's wrong? What's wrong with you? What's your problem? You don't have to go through a lieutenant if you have a problem on this team. You can come to me."

Now Jaycox seemed even more upset with Respondent. Although he tried his best to avoid an argument, Respondent felt that Jaycox wanted to engage him in one. Instead, Respondent felt it best to stay quiet. He felt that if he matched Jaycox's tone, the interaction could escalate to a point beyond repair.

Respondent said that generally when his superiors want to tell him about his performance, good or bad, his approach is to sit there and listen to the instructions. This is

“because their job is to instruct you on to do something that you have to do, they are your superior.” So Respondent remained silent and was just looking at Jaycox.

Jaycox said, “Why are you looking at me like that? Don’t give me that perp look.”

Respondent said, “What look?”

Jaycox said, “That look right there. That’s a perp look. Don’t look at me like that.”

Respondent felt hurt by this. Respondent explained, “I honestly like the sergeant. We work well together. He is very knowledgeable and smart. I felt like he let me down I felt like dirt. Like low, like scum.”

The sergeant had never before insulted him in that manner. Respondent explained that he and other police officers use the word “perps” to refer to criminals that they arrest, use the term disparagingly and as an insult. Respondent felt that this comment was “a personal attack against me and my character as a person” and that this was no longer instruction from a sergeant. Respondent felt the best thing to do was to leave the office.

As he opened the door, he said to the sergeant, “If I’m such a perp I should slam this door in your face like a perp.” When he said this, he did not yell, “because he was so close to me, it did not make sense to yell.”

When asked why he said what he said to the sergeant, Respondent explained, “Well, it was kind of like a metaphor to let him know that, listen, I am not a perp. A perp would do something like this. So to show you that I am not a perp, that is something I should do to you in response to you calling me that.”

Respondent stated that he never slammed the door in the sergeant’s face, that he never intended to do that, and never tried to do that.

Respondent's attorney focused much of his argument on the sergeant's using the word "perp" to describe Respondent and what an insult that word is to a police officer in the Department.

But neither how Jaycox used that word, what Jaycox meant when he said it or whether he should have said it, is the issue before this Court. The sole issue before this Court is whether Respondent's statement to the sergeant was discourteous.

The first question to determine is what Respondent said. What Jaycox testified he heard ("I would smash this fucking door in your face") and what Respondent testified that he said ("If I were a perp, I would slam this door in your face") are remarkably similar. Jaycox admitted that it was possible that Respondent may have begun his statement with "If I was a perp." Particularly since no one else nearby heard Respondent's statement, the sergeant's admission indicates that he misheard and leads the Court to discount that a profanity was uttered.

Instead, this Court focuses on the statement which Respondent himself admits. Respondent conceded that he was angry because of Jaycox's choice of words. With the emotions of hurt, disappointment and anger evoked in Respondent by the insult he perceived, Respondent did not say these words lightly or in a joking manner. Any implication that Respondent's words to Jaycox were delivered with tranquility defies common sense.

Respondent's attorney indicated that the insult to Respondent was so offensive that it justified Respondent's statement. This Court disagrees. As the Department argued, if Respondent believed the sergeant's comment was improper, Respondent could have filed his own complaint. Respondent himself admitted that he should have said instead to Jaycox what he really meant to convey: "Sarge, that is not the type of character I am." Respondent conceded

that he did not have to say what he did and that it was an emotional response to what Jaycox had said to him.

The Court finds Respondent Guilty in Part, for making the discourteous statement, but not for the profanity charged.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. *See Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974).

Respondent was appointed to the Department on January 10, 2005. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

After both men were interviewed that night, Respondent was not modified or suspended, did not have his gun removed and is awaiting a promotion to detective as a narcotics investigator.

That no one heard or observed Respondent's statement to Jaycox, or any of the other behaviors Jaycox described, lessens the impact of Respondent's discourtesy.

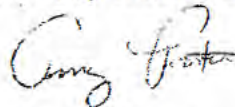
That a police officer would be offended if he thought he was being compared to a perp is understandable; Respondent's testimony about how the sergeant's words made him feel was credible. Respondent's believing the sergeant was insulting him does not excuse his behavior, but mitigates it.

Respondent's counsel and the Department both argued that the other man was having a bad day. The Court's impression was that they were both having a bad day. Both men testified credibly that they had worked well together in the past and expressed surprise at what each

perceived as disrespect by the other. The interaction that one night seems to have been a departure in miscommunication and misunderstanding between two people who otherwise had a professional rapport.

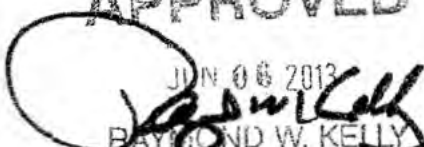
Most recently a police officer with no disciplinary history was found guilty of discourtesy, but not the use of profanity. *Case No. 2021/10*, (February 19, 2013). In that case, the officer expressed his discourtesy in front of other members at roll call, whereas in the instant case, no one else heard Respondent's discourtesy. Based on this recent case precedent, the Court recommends a penalty of ten vacation days.

Respectfully submitted,



Amy J. Porter

Assistant Deputy Commissioner - Trials

APPROVED
JUN 06 2013

RAYMOND W. KELLY
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER SIMON LAINE
TAX REGISTRY NO. 936901
DISCIPLINARY CASE NO. 2012-6774

For his last three annual performance evaluations, Respondent received a rating of 4.5 (“Extremely Competent/Highly Competent”), a rating of 4.0 (“Highly Competent”) and a rating of 3.0 (“Competent”). He has been awarded five medals for Excellent Police Duty and three medals for Meritorious Police Duty. [REDACTED]

[REDACTED] He has made 388 arrests. Respondent has no prior formal disciplinary record.

For your consideration.



Amy J. Porter
Assistant Deputy Commissioner Trials